HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 277/06 (S/S)

Harish Chand Tewari and others.

vs

State and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 27-02-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 227 (SS) OF 2006

1. Harish Chandra Tiwari, S/o Sri Bachi Ram Tiwari, Head Clerk (Retired), Uttaranchal Jal Sansthan, Haldwani Division, Haldwani, District Nainital.
2. Tara Dutt Budhori, S/o Sri Shiv Dutt, Pump Operator (Retired) Uttaranchal Jal Sansthan, Haldwani Division, Haldwani, District Nainital. .....Petitioners.

Versus

1. State of Uttaranchal, through Secretary, Payjal Vibhag, Uttaranchal Shasan, Dehradun,
2. Chief General Manager, Uttaranchal Jal Sansthan, Jal Bhawan, B-Block, Nehru Colony, Dehradun.
3. Director, Finance, Uttaranchal Jal Sansthan Jal Bhawan, B-Block, Nehru Colony, Dehradun.
4. General Manager, Uttaranchal Jal Sansthan, Kumaon Region, Nainital. .....Respondents.

Sri Manoj Tiwari, Advocate for the petitioner.

Sri Rakesh Thapliyal, Advocate for the respondents no. 2 and 3.

Dated:27.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed fr a writ of certiorari quashing the impugned order dated 21.12.2005 and the consequential letter dated 13.01.2006 issued by respondents no. 3 and 4 (Annexures No. 5 and 6 respectively to the writ petition).

2. Brief facts giving rise to the present writ petition are that the petitioners were regular and confirmed employees of

erstwhile Kumaon Jal Sansthan which was created under the provisions of U.P. Water Supply and Sewerage Act 1975. At the time of regularization of State of U.P., petitioner no. 1 was serving as Head Clerk in Divisional Office of Kumaon Jal Sansthan at Haldwani and petitioner no. 2 was serving as Pump Operator in Ram Nagar Shakha of Kumaon Jal Sansthan on the appointed day.

3. ccording to the counsel for the petitioners, Kumaon Jal Sansthan came into existence on 26.08.2002 and the petitioners thereafter became employee of Uttaranchal Jal Sansthan. Petitioner no. 1 served in Uttaranchal Jal Sansthan on the post of Head Clerk upto 31.10.2002 and petitioner no.2 served in Uttaranchal Jal Sansthan as Pump Operator up to 28.02.2003. Both the petitioners have completed their age of superannuation on the aforesaid dates and they retired from the service.

4. On 26th August, 2002, it was decided that retiral dues shall be paid in accordance with the provisions of the Palika Centralized Service Retirement Benefit Rules 1981 as applicable in the State of Uttaranchal as will are appear from the circular letters dated 21.02.2005 and 28.02.2005.

5. Sri Manoj Tiwari, learned counsel for the petitioner has submitted that in accordance with the Circular dated 21.02.2005, the retrial benefits have to be extended to the petitioners under the provisions of the Palika Centralized Service Retirement Benefit Rules, 1981 and this scheme was made applicable from 26th August, 2002.

6. The grievance of the petitioner is that the demand of retiral benefits in pursuance of the Palika Centralized Service Retirement Benefit Rules, 1981, which was made effective from 26th August, 2002, has been rejected on the ground that those persons, who have already been given the pensionery benefits,

the same cannot be reopened vide order dated 13th January, 2006. The said order is quoted below:-

विषयः–– नयी पेंशन नियमावली के अन्तर्गत देय संशोधित पेंशन के सम्बन्ध मे।

उपरोक्त विषयक के सम्बन्ध में अवगत कराना है कि इस कार्यालय के पत्र संख्या 4122/लेखा पेंशन/दिनांक 24/10/2005 द्वारा आपका संशोधित पेंशन प्रकरण कार्यालय मुख्य महाप्रबन्धक, उत्तरांचल जल संस्थान देहरादून को प्रेषित किया गया था। कार्यालय मुख्य महाप्रबन्धक, उत्तरांचल जल संस्थान, देहरादून ने अपने कार्यालय पत्र संख्या 4460/पें0 ग्रे0/ 2006–06, दिनांक 21/12/2005 द्वारा अवगत कराया है कि जिन कार्मिकों को सेवानिवृत्त लाभ प्राप्त हो चुके हैं, उनके प्रकरणों पर नियमानुसार किसी भी दशा में पुर्नविचार (Reopen) नहीं किया जा सकता है। सादर सूचनार्थ प्रेषित।"

7. The sole contention of the petitioner is that they have already retired on 31st October, 2002 and 28th February, 2003 respectively and the scheme was made applicable from 26th August, 2002 i.e. before the retirement of the petitioners.

8. According to the petitioners they retired on 31.02.2002 and 28.02.2003 respectively and as such the scheme was made applicable on 26th August, 2002.

9. Taking into consideration the judgment of D.S. Nakara, where it has been held that if the scheme is applicable to the employees, who were on the duty on 26th August 2002, when the scheme was made applicable, definitely the petitioners are entitled for the same.

10. Since the matter has not been opened without examining the scheme, the representation of the petitioner has already been rejected, the respondents, therefore, are directed to decide the merit of the claim of the petitioners in accordance with the scheme available to the petitioners. The petitioner shall make a fresh representation within a period of ten days before the respondent no. 2.

11. The respondent no.2 shall decide the same in accordance with the scheme applicable within a period of two months thereafter after applying the statutory rules of the Palika Centralized Service Rules.

12. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

27.02.2006

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